

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. MCI WORLDCOM, INC., Respondent. | DOCKET NO. FCU-03-21 |
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**ORDER DOCKETING FOR FORMAL PROCEEDING,
DENYING MOTION TO DISMISS,
AND REQUESTING STATUS REPORT**

(Issued January 20, 2004)

On March 24, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for formal complaint proceedings pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution issued in C-03-10, involving MCI WorldCom, Inc. (MCI), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On January 8, 2003, Dr. Syam Kilaru filed a written complaint with the Board alleging that he was induced to switch his long distance telephone service from AT&T to MCI by a telemarketer who represented that Dr. Kilaru would receive a rate of \$.37 per minute for calls to India and one hour per month of free calling to India for three months. Dr. Kilaru alleged that based on this offer, he switched his long distance service to MCI, but MCI did not make good on the offer. Board staff identified the matter as C-03-10, and, pursuant to Board rules, on January 10, 2003, forwarded the complaint to MCI for response.

MCI responded on January 31, 2003, stating that its records show that Dr. Kilaru's long distance service was switched from AT&T to MCI following a third-party verification call. The third-party verification call confirmed that Dr. Kilaru was the authorized decision maker for that phone number and that the new rates with MCI would be \$12.95 per month for domestic calling, which included 200 free minutes per month with additional minutes to be billed at \$.07 per minute, and an international calling plan billed at \$2 per month. MCI further stated that a welcome packet was sent to Dr. Kilaru which specified that the rates for calls to India on weekdays were to be billed at \$.49 per minute and calls to India on weekends were to be billed at \$.42 per minute. MCI also stated that a review of Dr. Kilaru's account showed that the domestic calls were billed correctly, however, the calls to India were not billed correctly and a credit of \$219.27 was placed on Dr. Kilaru's account.

On March 10, 2003, Board staff issued a proposed resolution describing these events and proposing that the credit offered by MCI represented a fair resolution of

the situation. No party other than the Consumer Advocate has challenged the proposed resolution.

In its March 24, 2003, petition, Consumer Advocate asserts that the proposed resolution does not address the potential misrepresentation of MCI's rates during the solicitation call to Dr. Kilaru. Consumer Advocate argues that the alleged fraud vitiates any authorization that Dr. Kilaru may have given to MCI. In addition, Consumer Advocate asserts that other slamming complaints received by Board staff have named MCI as the alleged violating company. Consumer Advocate requests that the Board docket this complaint for a formal proceeding and impose civil penalties on MCI.

On April 14, 2003, MCI filed a response and a motion to dismiss Consumer Advocate's petition. MCI argues that Consumer Advocate's petition fails to provide a reasonable ground for further investigating this complaint. In support of its assertion, MCI states that its actions were correct and lawful and that it obtained proper verification from Dr. Kilaru before switching his long distance telephone service. Therefore, MCI concludes, it did not violate Iowa Code § 476.103.

On April 22, 2003, Consumer Advocate filed a reply to MCI's response and motion to dismiss, maintaining that the telemarketing tactics used by MCI were deceptive and vitiate any authorization that Dr. Kilaru may have given for the change of service. Without the proper authorization, Consumer Advocate asserts that MCI was in violation of Iowa Code § 476.103.

The Board has reviewed the record to date as well as the additional slamming complaints made against MCI and finds that there is sufficient information to warrant

further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until February 16, 2004, and will request that the parties submit a report to the Board regarding the status of this matter on or before that date.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on March 24, 2003, identified as Docket No. FCU-03-21, is granted and docketed for formal proceeding.
2. The motion to dismiss the petition filed by MCI WorldCom, Inc., on April 14, 2003, is denied.
3. The parties shall submit a status report to the Board on or before February 16, 2004, as described in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of January, 2004.